IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2620 OF 2004

IN

SUIT NO. 2468 OF 2004

Neeta R. Patankar ... Plaintiff.

vs.

Sunil M.Rane & others. .... Defendants.

Mr.S.C.Naidu i/b. C.R.Naidu & co., for Plaintiff.

Ms.Veena B.Thadhani, for Defendant nos.1,2 and 5.

CORAM: D.K.DESHMUKH,J.

DATED: 1st July,2005

P.C.:-

1. The learned counsel for defendant nos.1,2 and 5 states that Defendant nos. 1, 2 and 5 are in possession of the Bungalow described at item no.1 at "Exhibit A" to the plaint. She further states that without seeking the leave of the Court, defendant nos.1,2 and 5 shall not transfer, alienate or part with possession, or create third party rights in the said property. The statement is accepted.

2. The plaintiff is seeking an order of temporary injunction and appointment of Receiver in relation to the suit properties which are described in Exhibit A. So far as the bungalow at item no.1 is concerned, it appears that it was owned by the deceased and now the plaintiff and defendants will have 1/6th share in the property. It is a residential premises which are occupied by defendant nos.1, 2 and 5 who are the sharers in the property. In these circumstances therefore, in my opinion, it will not be appropriate to appoint Receiver. The interest of the plaintiff is protected because of the statement made by defendant nos. 1, 2 and 5. Therefore, no interim order in relation to the Bungalow is necessary.

3. So far as the property at Item no.2 Shop is concerned, it appears that the deceased was not the owner of the shop premises, but he was a tenant and it is not the case of the plaintiff that the plaintiff was carrying on business in that shop alongwith the defendants at the time of the death of the deceased. Therefore, it prima facie appears that the tenanted premises is not inherited by the plaintiff, but would be inherited by some of the defendants who were carrying on business with the deceased at the time of his death. Therefore, the plaintiff does not have prima facie case in relation to the property at Item no.2. Therefore, there is no interim order in relation to the property at Item no.2 in Exhibit A. Notice of Motion disposed of.